

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States of America,)	
)	
Plaintiff,)	No. CR-15-1723-TUC-RCC-DTF
)	
vs.)	Tucson, Arizona
)	April 4, 2018
Lonnie Ray Swartz,)	3:26 p.m.
)	
Defendant.)	
)	

BEFORE: THE HONORABLE RANER C. COLLINS, JUDGE

REPORTER'S EXCERPTED TRANSCRIPT OF PROCEEDINGS

JURY TRIAL
DAY 10

(TESTIMONY OF JAVIER DIAZ-TREJO)

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CR-15-1723-TUC-RCC - April 4, 2018

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I N D E X

<u>GOVERNMENT WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JAVIER DIAZ-TREJO				
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<u>NO.</u>	<u>DESCRIPTION</u>		
18A	Autopsy Report (Spanish)	6	

Javier Diaz-Trejo - Direct Examination

1 (The following excerpt is the testimony of Javier
2 Diaz-Trejo.)

3 THE COURT: You may call your next witness.

4 MS. FELDMEIER: Dr. Diaz-Trejo, Javier Diaz-Trejo.

5 THE CLERK: Raise your right hand, please. 15:26:57

6 (JAVIER DIAZ-TREJO, GOVERNMENT WITNESS, SWORN.)

7 THE CLERK: Thank you. Please be seated.

8 Please state your full name for the record, and please
9 spell your last name.

10 THE WITNESS: My name is Javier Diaz-Trejo. 15:27:17

11 MS. FELDMEIER: May I proceed?

12 THE COURT: You may.

13 DIRECT EXAMINATION

14 BY MS. FELDMEIER:

15 Q. Where are you employed, Dr. Diaz? 15:27:34

16 A. I currently work with the State Prosecutor General's Office
17 for the State of Sonora.

18 THE COURT: They need you to speak up a little bit.

19 THE WITNESS: I currently work for the State
20 Prosecutor General's Office for the State of Sonora. 15:27:54

21 BY MS. FELDMEIER:

22 Q. And what is your job?

23 A. I'm a forensic examiner in Nogales, Sonora.

24 Q. And how long have you been employed there?

25 A. At the State Prosecutor General's Office, it's been 28 15:28:14

Javier Diaz-Trejo - Direct Examination

1 years approximately.

2 Q. And all that time as a medical forensic examiner?

3 A. Yes, yes, I'm a medical examiner.

4 Q. And prior to that did you also work as a doctor in a
5 different location?

15:28:43

6 A. And I worked at PC at Yecora, Sonora. I split my time
7 between being a forensic doctor and a doctor in a family
8 practice, just for three years. And then as a medical
9 examiner.

10 Q. Okay. And where did you go to medical school?

15:29:19

11 A. In the City of Mexico at the Polytechnical Institute.

12 Q. And what year did you receive your medical degree?

13 A. In '80 -- '85.

14 Q. Are you currently on leave from your job for medical
15 reasons?

15:29:58

16 A. Yes. I have a medical disability for an accident that
17 happened at my house.

18 Q. When did that happen?

19 A. That happened on February 10th of this year.

20 Q. And briefly, you had an explosion of an indoor gas tank;
21 correct? And suffered some severe injuries as a result?

15:30:26

22 A. Yes, I got second degree burns on my body, on my two arms
23 and on my face.

24 Q. And you are still experiencing some medical issues, so you
25 are not back to up 100 percent and back to work?

15:31:00

Javier Diaz-Trejo - Direct Examination

1 A. Yes. Yes, because a doctor needs that.

2 Q. Okay. I'd like to direct your attention to October 10th of
3 2012. On that day were you involved in an investigative team
4 that responded to a crime scene on West International involving
5 a deceased unidentified male?

15:31:29

6 A. Yes, that's right.

7 Q. And did you participate in the inspection of the crime
8 scene?

9 A. That's right.

10 Q. And the inspection of the body?

15:31:46

11 A. Also.

12 Q. Did you also conduct the autopsy on the unidentified male
13 along with Dr. Absalon Madrigal?

14 A. Indeed, yes.

15 MS. FELDMEIER: Okay. May I approach, Your Honor?

15:32:14

16 THE COURT: You may.

17 BY MS. FELDMEIER:

18 Q. Dr. Diaz, I'm showing you what's been marked as Exhibit
19 18A. Do you recognize that?

20 A. Yes, that's the document we prepared.

15:32:30

21 Q. And that is the autopsy report relating to the event that's
22 on trial today?

23 A. Yes, that's right.

24 Q. And did you co-sign that report along with Dr. Madrigal?

25 A. Indeed, yes.

15:32:53

Javier Diaz-Trejo - Direct Examination

1 Q. And that contains yours and Dr. Madrigal's findings;
2 correct?

3 A. I didn't hear that well.

4 Q. Does that report contain the findings by both you and
5 Dr. Madrigal?

15:33:13

6 A. Yes, yes, yes, yes.

7 Q. Okay. Now we've already gone through that report
8 extensively, so we're not going to go through it again with
9 you.

10 But what I'd like to do is direct your attention to
11 approximately 18 months after you prepared that report, to
12 August 19th of 2014.

15:33:25

13 On August 19th of 2014, do you recall attending a
14 meeting with American authorities?

15 A. Yes.

15:33:51

16 Q. And prior to going to that meeting did you prepare yourself
17 by reviewing anything relating to the homicide?

18 A. Yes. My colleague, Mr. Absalon, as well as I went over the
19 document.

20 Q. In August of 2014?

15:34:16

21 I believe you met with us and told us that you
22 hadn't --

23 MR. CHAPMAN: Objection, leading.

24 THE COURT: Sustained.

25 BY MS. FELDMEIER:

15:34:24

Javier Diaz-Trejo - Direct Examination

1 Q. Okay. I want to make sure we're clear, we're talking about
2 August 19th of 2014.

3 Do you recall that day in Mexico?

4 A. In Nogales, Arizona; right?

5 Q. No. There's a meeting in 2014 in Nogales, Sonora.

15:34:42

6 A. Oh, is that when you went to the PGR?

7 Q. Yes, that meeting.

8 A. Oh, yes, yes, I do remember.

9 Q. Okay. So before you went to that meeting, did you prepare
10 yourself by reviewing any documents, for that meeting?

15:35:03

11 A. Yes.

12 Q. Okay. And when you came to the meeting, did you talk about
13 your opinion as to which shot was the first shot to the victim?

14 A. Yes.

15 Q. And did you opine at that time that the first shot was the
16 one number 2 to the head?

15:35:31

17 A. Yes, yes.

18 Q. And that one brought him to the ground.

19 A. That's right.

20 Q. And that was supported, you stated, because of abrasions to
21 the backs of the hands and to the face.

15:35:49

22 A. Yes. He had scrapes on the back of his hands, and that's
23 why I thought it could have been the shot -- gunshot to the
24 head.

25 Q. Okay. And then in 2016 did you have an opportunity to meet

15:36:16

Javier Diaz-Trejo - Direct Examination

1 with us, the United States team, here in the United States
2 Courthouse at the United States Attorney's Office?

3 A. Yes, that's right.

4 Q. And at that time did we go through your autopsy report
5 paragraph by paragraph?

15:36:40

6 A. Yes, yes.

7 Q. At that time did you identify another wound that could also
8 potentially have been the first shot?

9 A. That's right. A change of opinion, that it could have been
10 number 4 to the back.

15:37:07

11 Q. So at that time your change of opinion was that the first
12 shot could have been either number 2 or number 4?

13 A. Yes.

14 Q. At that time was the United States team withholding the
15 United States' evidence from you?

15:37:22

16 MR. CHAPMAN: Objection, form of the question.

17 THE COURT: Sustained.

18 BY MS. FELDMEIER:

19 Q. By 2016 had the United States team shared any of the United
20 States' evidence with you?

15:37:35

21 A. No.

22 Q. Would it be fair to say that we were just accepting the
23 information you gave but not providing any in return?

24 A. We were studying this together with Dr. Madrigal and you
25 and going over these notes.

15:38:11

~~Javier Diaz-Trejo - Direct Examination~~

1 Q. Okay. But what I want to do is just kind of move through
2 how your opinion progressed and why changes were made as we
3 went through it.

4 So did you have an opportunity to have a pretrial
5 meeting with me and Mr. Kleindienst and Agent Arrasmith in
6 Arizona within the last week or so?

15:38:30

7 A. Yes.

8 Q. At that time did we provide you with a hypothetical that
9 the victim may have hit the ground and remained alive for a
10 period of time before another volley of shots hit him?

15:38:57

11 A. Yes.

12 Q. Is that the first time that we told you that?

13 MR. CHAPMAN: Object to the form of the question.

14 They're asking him a question, they're not presenting evidence
15 to him, Your Honor.

15:39:17

16 THE COURT: Rephrase the question.

17 BY MS. FELDMEIER:

18 Q. Had we ever given you that evidence previously?

19 MR. CHAPMAN: Object. It's not evidence, it's a
20 question.

15:39:26

21 THE COURT: That question previously.

22 BY MS. FELDMEIER:

23 Q. Had we ever provided you previously with that hypothetical?

24 A. Yes, studying that.

25 Q. Okay. I'm not -- I'll move on.

15:39:45

Javier Diaz-Trejo - Direct Examination

1 And after you heard the hypothetical, asking whether
2 or not there was an order of shots that could work with the
3 idea of there being a gap between shots, and the victim still
4 being alive, did you come up with another opinion?

5 MR. CHAPMAN: Objection, it's an incomplete
6 hypothetical, and the question is unclear.

15:40:13

7 THE COURT: Overruled.

8 THE WITNESS: Yes, yes, yes.

9 BY MS. FELDMEIER:

10 Q. Okay. And what new opinion did you come up with?

15:40:24

11 A. That the person, the person who was wounded received --

12 (Court reporter interruption.)

13 THE COURT: The court reporter asked you to start over
14 with the answer.

15 THE WITNESS: That the person who was wounded, the
16 first impact could have been to the posterior trunk of the
17 body, that is the back.

15:41:06

18 BY MS. FELDMEIER:

19 Q. Continue.

20 A. An impact on the right side, slightly on the right to the
21 back of the person, at the height of the thorax, which enters
22 the body and hits the vertebrae on the spinal column.

15:41:24

23 And in the middle of this vertebrae there is a -- is
24 the spinal cord, and it damages it. And the person becomes
25 paraplegic from where the wound is down. And logically from

15:42:32

~~Javier Diaz-Trejo - Cross-Examination~~

1 here on up he would continue to have movement, would be alive.

2 And afterwards the other bullets were -- arrived at
3 his body, and that is the head.

4 BY MS. FELDMEIER:

5 Q. Did the other bullets arrive also at the back? 15:43:12

6 A. Yes. The bullets, he had five in the back, all which
7 entered the thoracic cavity.

8 Q. And did you notice anything about the position of the exit
9 wounds on the left arm?

10 A. Indeed the person when it was impacted had movement of the 15:43:38
11 upper part and moved, and the bullet went in the left arm where
12 we removed it surgically.

13 MS. FELDMEIER: Thank you.

14 Those are all my questions, Your Honor.

15 THE COURT: Mr. Chapman. 15:44:28

16 CROSS-EXAMINATION

17 BY MR. CHAPMAN:

18 Q. Good afternoon, sir. I hope you're feeling better.

19 I'm going to ask you some follow-up questions.

20 My understanding from hearing Dr. Madrigal testify 15:45:17
21 earlier was that you were the lead forensic investigator at the
22 scene; is that right?

23 A. Yes, that's right.

24 Q. So in terms of the forensic aspect of this case, you were
25 the one that was in charge of coordinating the investigation? 15:45:44

~~Javier Diaz-Trejo - Cross-Examination~~

1 A. Yes. In the expert sense, yes.

2 Q. And that would also involve how the autopsy was conducted;
3 is that correct?

4 A. Yes, that's right.

5 Q. And my understanding is that you performed the autopsy
6 with Dr. Madrigal, and then a report was prepared; is that
7 correct?

15:46:05

8 A. Yes.

9 Q. And obviously this was an unusual case for you because it
10 involved an international incident where a federal law
11 enforcement officer from the United States had shot and killed
12 someone in Mexico. Can we agree on that?

15:46:23

13 A. Yes.

14 Q. I want to talk to you about this meeting that you had on
15 August 19th, 2014. Do you recall that meeting?

15:46:53

16 A. Yes, yes, I do.

17 Q. The Government has disclosed that this meeting occurred in
18 the offices of the PGR in Nogales, Sonora; is that correct?

19 A. That's right.

20 Q. And that the following individuals were present, if you
21 know. I'll read them off and then ask you if you know.

15:47:23

22 Robert Ciaffa, attache for Department of Justice to
23 Mexico; Wallace Kleindienst, Assistant U.S. Attorney; Karen
24 Rolley, Assistant U.S. Attorney; Henry Leventis, Department of
25 Justice lawyer; Michael Haag; Lucien Haag; Alfonso Villasenor,

15:47:52

~~Javier Diaz-Trejo - Cross-Examination~~

1 who was the interpreter; Mexican attorney Martin Felix Araiza;
2 Mexican attorney Guillermo Avilez Encinas; Dr. Absalon Godinez;
3 you; and Julio Cesar Trejo Villareal.

4 Does that sound right to you, sir?

5 A. Yes.

15:48:23

6 Q. So the context of this meeting is that 18 months earlier
7 there had been this shooting, it was an international incident,
8 you prepared the autopsy, and then you were asked to attend
9 this meeting with U.S. officials and Mexican officials to
10 discuss your results; is that correct?

15:48:55

11 A. Yes.

12 Q. The Government has disclosed to me handwritten notes
13 from -- and typewritten notes from federal DOJ attorney Henry
14 Leventis and AUSA Karen Rolley that purport to document
15 statements that you made during the meeting.

15:49:48

16 So I'm going to ask you questions based on those notes
17 and ask if you recall saying various things. Fair enough?

18 A. Yes.

19 Q. Do you recall saying that a metal stylus was used to
20 determine the nature of the decedent's wounds and photographs
21 were taken with the stylus in each wound?

15:50:25

22 A. Yes, yes, I do.

23 Q. Do you recall saying that you believed the bullet wound to
24 the head -- which is identified in your autopsy report in
25 paragraph number 2 as the bullet that entered behind the right

15:50:55

~~Javier Diaz-Trejo - Cross-Examination~~

1 ear and transected the brain. Do you recall which one I'm
2 referring to?

3 A. You're referring to number 2?

4 Q. Paragraph number 2 of your report talks about an
5 injury -- if you want to read paragraph number 2 to refresh
6 your recollection, that's fine.

15:51:30

7 A. Yes, yes.

8 Q. Are you done?

9 A. Yes.

10 Q. Okay. Do you recall saying that that injury, which was a
11 bullet injury that went from transecting the right ear and
12 coming to lodge under the skin on the left forehead, that that
13 wound was the first wound, because all of the other wounds had
14 a rear-to-forward, right-to-left trajectory?

15:51:44

15 Do you remember saying that?

15:52:14

16 A. But -- yes, I do.

17 THE INTERPRETER: But the interpreter needs a
18 clarification.

19 THE WITNESS: Yes, but it's from above to below, from
20 head to feet.

15:52:44

21 BY MR. CHAPMAN:

22 Q. Instead of rear to forward, it would be pointing up in this
23 direction coming out here?

24 A. From below and then ascending, from back forward.

25 Q. Thank you.

15:53:09

~~Javier Diaz-Trejo - Cross-Examination~~

1 Do you remember telling investigators at this meeting
2 that you believed that the shot to the head killed the deceased
3 and caused him to lose his balance, and that the scrapes to the
4 backs of the deceased's hands and face were the result of being
5 propelled forward by that impact? 15:53:36

6 A. At that time we believed that.

7 Q. And that's what you said at that time; correct?

8 A. Yes.

9 Q. And you specifically ruled out the theory at that time that
10 the injury identified in paragraph 4 of your report to the 15:53:57
11 thoracic vertebrae could have happened first while the decedent
12 was running, and then he collapsed and received the injury
13 number 2 to the head.

14 You specifically rejected that theory; isn't that
15 right? 15:54:26

16 A. I said specifically that wound number 4 could have been the
17 first one, by the way that the other wounds were shown to be,
18 yes, that's true.

19 Q. Well, I understand that that's your testimony now. But
20 I'm asking you what you told investigators back in August of 15:54:59
21 2014.

22 And the notes that the Government has given me from
23 attorneys at the meeting say that you specifically ruled that
24 out. And one of the reasons you ruled it out, you explained to
25 them, was because of the abrasions to the backs of the hands of 15:55:21

~~Javier Diaz-Trejo - Cross-Examination~~

1 the deceased and to the face.

2 Do you remember telling them that?

3 A. Yes.

4 Q. And I understand you changed your opinion later. But the
5 first opportunity that you had to meet with U.S. officials and
6 Mexican officials about this, that's what you told them;
7 correct?

15:55:42

8 A. Yes, that's right.

9 (Discussion off the record between defense counsel.)

10 BY MR. CHAPMAN:

15:57:40

11 Q. Didn't you also tell investigators at that time -- and I'm
12 looking through the notes now -- that the impact to the head,
13 number 2, propelled the deceased forward? Do you remember
14 saying that?

15 A. Yes, I do.

15:58:15

16 Q. And that he may have hit the wall of the building near
17 where he was found with his face?

18 A. I said that it was against the ground.

19 THE INTERPRETER: The interpreter needs a repetition.

20 MR. CHAPMAN: Sure.

15:58:54

21 THE WITNESS: Falling forward, falling forward to the
22 ground.

23 THE INTERPRETER: The interpreter has a slight
24 correction.

25 Falling face first forward toward the ground.

15:59:30

Javier Diaz-Trejo - Redirect Examination

1 BY MR. CHAPMAN:

2 Q. Okay. Did you tell the investigators that the body had
3 blood and cranial injuries, it had come in complete contact
4 with the wall of the house or dwelling, the upper portion of
5 the body had come into contact against the wall?

15:59:51

6 A. I said it came in contact with a surface, and it was
7 against the ground.

8 THE INTERPRETER: The interpreter has --

9 A hard surface, and it was the ground.

10 MR. CHAPMAN: I have no further questions. Thank you. 16:00:31

11 REDIRECT EXAMINATION

12 BY MS. FELDMEIER:

13 Q. Just a clarification.

14 Miss Rolley's notes state that the body had blood and
15 cranial injuries. Is that something you said in 2014?

16:00:58

16 A. We're talking about the cranial injury, that's deep. And
17 superficially the head had wounds, hits.

18 Q. I understand.

19 The way she put it was, the body had blood and cranial
20 injuries.

16:01:31

21 So somewhere on the body, would you agree, there was
22 blood?

23 A. Yes.

24 Q. Okay. And it -- probably referring back to the body -- had
25 come in complete contact with the wall of the house or

16:01:42

Javier Diaz-Trejo - Redirect Examination

1 dwelling.

2 Do you remember when you were out on the crime scene,
3 is my question, and whether or not any portion of the body was
4 up against the wall?

5 A. It was ventral decubitus, that is face down. And on 16:01:59
6 the -- on the floor of the sidewalk.

7 Q. Okay. And where was the left side of the body? Was it
8 against the wall?

9 A. Yes, yes, that's right.

10 Q. And then it said, the upper portion of the body had come in 16:02:36
11 contact against the wall.

12 A. That's right.

13 Q. So when we say "the upper portion of the body," are you
14 referring to the arm?

15 A. The arm and that part of his face; right? The part -- the 16:02:57
16 upper part is this, his arm and head.

17 Q. Okay. But the face, when you came to the scene, was not in
18 contact with the wall.

19 A. No.

20 Q. And as you sit here today, and when you did the autopsy 16:03:24
21 back in 2012, what do you believe the face came in contact with
22 to cause the injuries to the left side?

23 A. These are abrasive wounds on the left side of his body.

24 And these logically could have been caused by contact with the
25 ground at the time of the fall. That's what I think. 16:03:58

Javier Diaz-Trejo - Redirect Examination

1 Q. Okay. And you also related back in 2014 that the body had
2 recent bullet wounds and particles of the wall on top of the
3 body.

4 A. Yes. Could you repeat that question?

5 Q. Did you state that the body had recent bullet wounds?

16:04:26

6 A. Yes, yes, yes.

7 Q. And did you state that the particles of the wall, or pieces
8 of the wall, were on top of the body?

9 A. Yes. Those are impacts that he received, and logically
10 they would be there because it was on the wall.

16:04:55

11 Q. Okay. So parts of the wall fell onto the victim's body?

12 A. Well, you could say yes.

13 Q. Did you have any evidence that as the victim was falling
14 any part of his face actually hit the wall?

15 A. Well, yes, it could be, it could be.

16:05:21

16 Q. What do you mean?

17 A. Yes, falling forward, it could have been with the wall or
18 with the ground.

19 Q. Okay. And you don't have an opinion onto which of those
20 two it was?

16:05:48

21 A. I think it was against the ground.

22 MS. FELDMEIER: Okay. I don't have any other
23 questions.

24 THE COURT: Jurors have any questions, please place
25 them in writing.

16:06:02

Javier Diaz-Trejo - Redirect Examination

1 It appears there are none.

2 Thank you, sir, you may step down.

3 (Further proceedings held on the record not included in
4 this transcript.)

5

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~~CR-15-1723-TUC-RCC - April 4, 2018~~

C E R T I F I C A T E

I, CANDY L. POTTER, do hereby certify that I am duly appointed and qualified to act as Official Court Reporter for the United States District Court for the District of Arizona.

I FURTHER CERTIFY that the foregoing pages constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction and control.

DATED at Phoenix, Arizona, this 4th day of June, 2018.

s/Candy L. Potter
Candy L. Potter, RMR, CRR